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RAILROADS—MAINTENANCE OF STATION—INJUNCTION.—Complainants who have purchased and improved property near a station, which the defendant railroad company now desires to abandon, pray for an injunction restraining the discontinuance of the station. There are no charter or statutory provisions requiring the company to maintain stations along their line nor have the defendants made any agreement with the complainants in respect thereto. *Held,* that the relief prayed for will not be granted. *Jacquelin et al.* v. *Erie Ry. Co.* (1905), — N. J. —, 61 Atl. Rep. 18.

The complainants contend (1) that each person who uses the road for the purpose of transportation has an equitable right to compel the railroad company to maintain the station; basing this claim upon the theory that by establishing the station and thereby inducing people to settle near, the company impliedly contracted to continue it. There seems to be little foundation for such a claim inasmuch as the courts have frequently refused to enforce positive contracts with individuals to continue the maintenance of stations on the ground that it was against public policy to permit railroad companies to thus limit their power of subserving public necessity and convenience. *Fla. C. & P. R. R. Co.* v. *State,* 31 Fla. 482, 34 Am. St. Rep. 30, 20 L. R. A. 419; *Tex. & Pac. Ry. Co.* v. *Marshall,* 136 U. S. 393. The remedy at law in an action for damages is adequate, and the court here properly refused to act. (2) The complainants further contend that the public have a legal right to the maintenance of the station, which the court of equity should protect. No rule of equity is better settled than that complainants are not in a position to ask for an injunction, when the right on which they found their claim is, as a matter of law, unsettled. *Citizens Coach Co.* v. *Camden H. R. Co.,* 29 N. J. Eq. 299; *Morris & Essex Ry. Co.* v. *Atty. Gen.,* 20 N. J. Eq. 530. That the courts of law, when there is no legislation on the subject, will hold it to be the duty of common carriers to maintain station at such points as the court shall determine is by no means clear. *State* v. *Rep. Val. Ry. Co.,* 17 Neb. 647, 24 N. W. 329, 52 Am. Rep. 424; *State ex. rel. Grinsfelder* v. *Spokane St. Ry. Co.,* 19 Wash. 518, 53 Pac. 719, 41 L. R. A. 515, 67 Am. St. Rep. 739. *Texas & Pac. Ry. Co.* v. *Marshall,* supra; *People* v. *N. Y. L. E. & W. Ry. Co.,* 104 N. Y. 58, 9 N. E. 856, 58 Am. Rep. 484.

Therefore if the legal right exists it must be enforced at law by mandamus. Nor has the court of equity power to keep the matter in statu quo pending the settlement of the legal principle, even though irreparable injury will result to the complainants ad interim. *Barber* v. *W. J. Title & Guar. Co.,* 53 N. J. Eq. 158, 32 Atl. 222; *People* v. *A. & V. R. R. Co.,* 24 N. Y. 261, 82 Am. Dec. 295. As pointed out in the present case, while the remedy at law hardly seems "adequate" if, at the time it is applied, the rights of the complainant have so suffered that there may be nothing of value left to him in the remedy, "there is, in the existing state of the law no provision for such a situation."

SALES—CONSTRUCTION OF CONTRACT—PAROL EVIDENCE OF SALE BY SAMPLE—ESTOPPEL.—Plaintiff sold a lot of beans to A, a commission house, exhibiting certain samples. The memorandum of sale made by A did not refer to the samples or mention time or place of delivery. Plaintiff shipped the beans

as agreed but A refused to accept them on the ground that part of them were not equal to the sample. Plaintiff acquiesced but left the beans in a public warehouse, subject to A's order, while attempting to sell them himself. In the meantime A disposed of the entire lot to defendants, who claim to be innocent purchasers without notice.

In this appeal on the part of defendants from an order denying their motion for a new trial, in an action to recover possession, *Held,* that parol evidence was not admissible to show that the sale was one by sample, and further, that if defendants shall be proved to have been innocent purchasers for value and without notice, then plaintiff will be estopped from asserting his title. *Gardiner et al.* v. *McDonogh et al.* (1905), — Cal. —, 81 Pac. Rep. 964.

The course of reasoning by which the court arrived at this result was as follows: the memorandum offered in evidence was a complete contract of sale; since it made no mention of samples, the sale must be presumed to have been by description; title accordingly passed to A immediately upon the completion of the contract but was retransferred to plaintiff at the time of his acquiescence in A's rejection of the beans; plaintiff, having allowed A, as commission merchants, to retain possession of the goods, could not be heard to deny defendant's title. The question whether a given writing is or is not a complete contract is for the court. *Beck* v. *West,* 87 Ala. 213; *Ry. Co.* v. *Wynn,* 88 Tenn. 321; *Thompson* v. *Libby,* 34 Minn. 374, 26 N. W. 1; *Scitz* v. *Brewers' Refrigerating Co.,* 141 U. S. 510, 35 L. Ed. 837. On the question whether or not a memorandum of sale constitutes a complete contract which may not be varied by parol evidence, the authorities are in conflict. The stricter view is upheld in *Harrison* v. *McCormick,* 89 Cal. 327, 26 Pac. 830; *Wiener* v. *Whipple,* 53 Wis. 298, 40 Am. Rep. 775 (relying on *Meyer* v. *Everth,* 4 Camp. 22; *Gardiner* v. *Gray,* 4 Camp. 144). SHAW, J., with whom concur VAN DYKE, and MCFARLAND, JJ., in the principal case, dissents from this view, and his opinion is supported by *Hersom* v. *Henderson,* 21 N. H. 224, 53 Am. Dec. 185; *Perrine* v. *Cooley,* 39 N. J. L. 449; *Neal* v. *Flint,* 88 Me. 72, 33 Atl. Rep. 669. In a sale by description title passes, in the absence of other stipulation, immediately upon the completion of the contract. *Wade v. Moffett,* 21 Ill. 110, 74 Am. Dec. 79; *Wing* v. *Clark,* 24 Me. 366; *Cleveland* v. *Williams,* 29 Tex. 204, 94 Am. Dec. 274; *Rail* v. *Little Falls Lumber Co.,* 47 Minn. 422, 50 N. W 471. In a sale where the quality of goods is expressly or impliedly warranted, title does not pass, however, until acceptance by the vendee. *Bach* v. *Levy,* 101 N. Y. 511, 5 N. E. 345; *Aultman* v. *Clifford,* 55 Minn. 159, 56 N. W. 593. Where the owner permits another to display the ordinary indicia of ownership, he will be estopped from denying title in an innocent third person who, for value, acquires possession on the faith of the apparent ownership. *McNeil* v. *The Nat'l Bank,* 46 N. Y. 325, 7 Am. R. 341; *Commercial Bank* v. *Armsby,* 120 Ga. 74; 65 L. R. A. 443; *Third Natl. Bank* v. *Smith,* (Mo. App.) 81 S. W. 215.

TRANSFER TAX—VESTED REMAINDER—EXERCISE OF POWER OF APPOINTMENT. —In a will taking effect before the passing of the transfer tax law, A devised one-half of his estate to trustees for his daughter, to be held in trust during